

1 F. Christopher Austin
Nevada Bar No. 6559
2 *caustin@weidemiller.com*
WEIDE & MILLER, LTD.
3 10655 Park Run Drive, Suite 100
Las Vegas, Nevada 89144
4 Tel. (702) 382-4804
Fax (702) 382-4805

5 *Attorney for Plaintiff*

6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 DONALD E. MORISKY, an individual,
10
Plaintiff,

Case No.: 2:20-cv-00964

11 v.

COMPLAINT

12 MMAS RESEARCH, LLC, a Washington
13 limited liability company, STEVEN
14 TRUBOW, an individual, MMAS Research
Italy S.R.L, an Italian company, and MMAS
Research France, SAS, a French company,

15 Defendants.

16 For its complaint against Defendants, Plaintiff Dr. Donald E. Morisky complains and
17 alleges as follows:

18 **NATURE OF ACTION**

19 This is an action for copyright and trademark infringement and unfair competition under
20 federal statutes, with pendent claims for common law trademark infringement, and state deceptive
21 trade practices.

22 Dr. Morisky, distinguished professor emeritus at the UCLA Fielding School of Public
23 Health is the owner of two federally registered copyrights in what is known as the Morisky
24 Medication Adherence Scale (“MMAS”), used world-wide as the “gold standard” for medical
25 practitioners and researchers to predictively assess potential compliance issues patients may have
26 with following medication protocols so that appropriate remedial and interventive actions can be
27 taken to preserve the health and even the life of the patient. He is also the owner of all related
28

1 intellectual property, including all trademarks employing the mark MORISKY, or MMAS used
2 in connection such medication adherence goods and services.

3 Prior to taking emeritus status, Dr. Morisky licensed Defendant MMAS Research, LLC,
4 whose sole principle and owner is Defendant Steven Trubow, to sublicense his copyrighted scales
5 and protocols in exchange for 50% of the net fees MMAS Research, LLC collected, among other
6 consideration. At the express and exclusive direction of Trubow, MMAS Research, LLC
7 breached the license agreement with Dr. Morisky by among other things failing to remit the fees
8 owed.

9 Accordingly, on April 10, 2020, Dr. Morisky terminated the license agreement with
10 MMAS Research, LLC, revoking any license MMAS Research, LLC had to use the Morisky
11 copyrights, trademarks and related intellectual property, including any right to sublicense its
12 affiliated entities, Defendants MMAS Research Italy S.R.L., and MMAS Research France, SAS,
13 owned, managed and controlled exclusively by Trubow, to do the same.

14 Nevertheless, at the express direction of Trubow, MMAS Research and its affiliated
15 Defendant entities have continued to unlawfully engage in the business of offering, sublicensing,
16 and infringing Dr. Morisky's copyrights, trademarks, and related intellectual property in Nevada,
17 throughout the United States and internationally.

18 **JURISDICTION**

19 1. This Court has subject matter jurisdiction over this case pursuant to 17 U.S.C. §§
20 101, et seq., 15 U.S.C. § 1121, and 28 U.S.C. §§1331 and 1338(a). This Court has supplemental
21 jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a) in that those claims
22 arise out of a common nucleus of operative facts as the federal claims, and the Court's exercise
23 of jurisdiction over the state law claims will promote judicial economy, convenience, and fairness
24 to the parties.

25 2. This Court has personal jurisdiction over Defendants because: (a) Defendants do
26 business and/or actively solicit business in Nevada; (b) Defendants have continuous and ongoing
27 business contacts with residents of Nevada, have scheduled training conferences in Nevada and
28 have maintained an address for company operations in Nevada; (c) Defendants have intentionally

engaged in acts targeted at Nevada that have caused harm within Nevada; and (d) Defendants have purposefully availed themselves of the privilege of conduction business in Nevada.

3. Venue is proper in the United States District Court for the District of Nevada under 28 U.S.C. § 1391(b) and (c), and venue lies in the unofficial Southern Division of this Court, in that Defendants conduct business in and or subject to personal jurisdiction in this district and venue and in that a substantial part of the acts or omissions giving rise to the claims asserted herein occurred and/or had effects in this district and venue.

PARTIES

2. Plaintiff, Dr. Donald E. Morisky, resides in Las Vegas, Nevada, and is distinguished professor emeritus at the UCLA Fielding School of Public Health. He is the creator of the “Morisky Medication Adherence Scale” and the holder of two federally registered copyrights relating to the same: TX0008285390 for “Morisky Medication Adherence Scale (4-item)” and TX0008632533 for “Morisky Medication Adherence Scale (8-item) (the “Morisky Copyrights”). He is the owner of the related trademarks: MORISKY, MORISKY MEDICATION ADHERENCE SCALE, MORISKY SCALE, MORISKY MEDICATION ADHERENCE PROTOCOL, MMAS, MMAS-4, MMAS-8, and MORISKY WIDGET (the “Morisky Marks”); and he is the owner of the related proprietary information, including, without limitation, the scoring and training protocols used in connection with his scales (the “Morisky Protocols”). Collectively, the Morisky Copyrights, Trademarks and Protocols are the “Morisky Intellectual Property”).

3. Defendant Steven Trubow is an individual residing in California and is the sole managing member of Defendant MMAS Research LLC, a Washington State limited liability company, which has operated out of California and Nevada and was formed for the exclusive purpose of sublicensing Dr. Morisky’s intellectual property in accordance with a license agreement between Dr. Morisky and MMAS Research.

4. On information and belief Trubow is the sole owner and executive authorized to control and direct all aspects of Defendants MMAS Research Italy S.R.L. and MMAS Research France, SAS, both of which companies have purported to have received sublicenses to Dr.

1 Morisky's intellectual property from Defendant MMAS Research, LLC. Collectively,
 2 Defendants MMAS Research, LLC, MMAS Research Italy S.R.L. and MMAS Research France,
 3 SAS, are identified herein as "MMAS Research."

4 **ALLEGATIONS COMMON TO ALL CLAIMS**

5 5. This case arises from the malicious efforts by Defendant Trubow directly and
 6 through his control of MMAS Research to infringe and wrongfully deprive Dr. Morisky of
 7 his life's work in developing the Morisky Intellectual Property.

8 **A. Dr. Morisky's Professional and Educational Background**

9 6. Dr. Morisky received a Master of Science degree in 1977 and a Doctor of Science
 10 degree in 1981, both from Johns Hopkins School of Hygiene and Public Health (Behavioral
 11 Sciences and Health Education).

12 7. Thereafter Dr. Morisky led a 36-year career as a professor and visiting professor at
 13 prestigious health and science universities and programs, including Johns Hopkins
 14 University, University of Hawaii, China Medical University, Taiwan, National Yang-Ming
 15 University, Taiwan, and the University of California at Los Angeles (UCLA).

16 8. Dr. Morisky concluded his full-time professorship at UCLA in 2017, after
 17 approximately 35 years of distinguished service as a Tenured Professor, a Vice Chair, and
 18 later Chair of the Department of Community Health Sciences, and as the Program Director
 19 for the Masters of Public Health for Health Professionals Program (MPH-HP).

20 9. Dr. Morisky attained Emeritus status in 2017 and continues to serve in that capacity
 21 and as a Professor of Public Health at UCLA Fielding School of Public Health for the
 22 Department of Community Health Sciences.

23 10. Dr. Morisky also continues to serve as a Distinguished Chair Visiting Professor for
 24 Kaohsiung Medical University, Kaohsiung City, Taiwan; the Distinguished Visiting
 25 Professor for China Medical University, School of Public Health, Taichung City, Taiwan; the
 26 Distinguished Visiting Professor for the Taiwan Medical University, College of Public Health
 27 and Nutrition, School of Public Health, Taipei; Senior Associate for the Charles R. Dre Post
 28 Graduate Medical School, Department of Internal Medicine; Associate for the UCLA

Jonsson Comprehensive Cancer Center; and as an Associate for Johns Hopkins University, School of Hygiene and Public Health, Department of Behavioral Sciences and Health Education.

11. Dr. Morisky has been the recipient of two major NIH grants in connection with his work; has received numerous honors, including “Distinguished Fellow, American Academy of Health Behavior and the Society of Public Health Education, Top 10 CBPR Intervention Program (HIV/AIDS Prevention Program Archive for Developing Countries), Program Excellence Award for “Behavioral Research in Support of HIV/AIDS Prevention in the Philippines, and numerous others. He has published over 30 books, book chapters or monographs and has authored or co-authored over 250 articles in peer-reviewed journals, in addition to numerous seminar presentations and speaking engagements for over three decades.

B. The Creation of the “Morisky Medication Adherence Scale”

12. Dr. Morisky is known world-wide as the foremost expert on identifying and remediating the life-threatening risks associated with the failure of patients to comply with medication protocols. Medical practitioners and clinicians have long known that patients too often die from avoidable complications with terminal or chronic illnesses simply because they fail to take their medication as prescribed.

13. Dr. Morisky’s life work has been to provide successful, proven and scientifically replicable protocols that literally extend and save the lives of patients with terminal and chronic illnesses by promptly identifying potential compliance issues and preemptively providing timely, scaled, and tailored intervention protocols.

14. Dr. Morisky’s work in this field commenced with his doctoral dissertation in 1982 which focused on the long-term outcomes of 400 hypertensive patients who were given educational counseling on the importance of taking their prescription medications as directed as opposed to a control group who did not receive such additional counseling.

15. This was one of the first studies in the field. The findings were so impressive as to result in its publication in the prestigious American Journal of Public Health in 1983,

1 and the adoption of the counseling intervention by the National Heart, Lung, and Blood
2 Institute.

3 16. The impact of educational intervention and the use of targeted questionnaires
4 as part of that process was also published in the influential peer-reviewed journal, Medical
5 Care in 1986. Thereafter, the questionnaire became known in medical literature around the
6 world as the “Morisky, Green and Levine Medication Adherence Questionnaire (“MGL
7 MAQ”). The article has subsequently been cited in medical literature over 3500 times.

8 17. In the same year, 1986, after engaging in numerous research focus group
9 sessions with patients, Dr. Morisky identified four simple yet critical questions, that upon
10 clinical study, proved to effectively predict medication adherence. This four-part
11 questionnaire became known as the “Morisky Medication Adherence Scale” or “MMAS”
12 and is now known as the “MMAS-4.”

13 18. From 1993 to 1997, Dr. Morisky worked as an external consultant on a NIH
14 (National Institutes of Health) research grant at the Martin Luther King Drew Medical Center
15 in Los Angeles to refine and improve the MMAS. The focus of this research was not merely
16 to identify potentially non-compliant patients, but importantly, to inform the medical
17 practitioner of exactly “why” the patient was not likely to take the prescribed medication.

18 19. This process took years of study and clinical trials to perfect. The result was
19 Dr. Morisky’s development of a simple eight-part questionnaire that could provide tailored
20 and targeted information to a medical practitioner sufficient to effectively implement a
21 counseling and intervention protocol for the provider’s patients, potentially extending or
22 saving their lives.

23 20. To distinguish this eight-part questionnaire it is called the “MMAS-8”, and the
24 four-part questionnaire thereafter has consistently been identified as the “MMAS-4.”
25 Collectively, the two scales are known as the “Morisky Medication Adherence Scales”
26 (herein, simply the “Morisky Scales”).

27 21. In the process of creating the Morisky Scales, Dr. Morisky also perfected the
28 scoring protocols required to accurately quantify likely medication adherence and identify

appropriate interventions. These processes are known as the “Morisky Medication Adherence Protocol” (herein, the “Morisky Protocol”).

22. The original MMAS studies were on adherence for hypertensive patients. Since 1983, Dr. Morisky, in collaboration with over 500 researchers throughout the world, has continued to assess the adherence predictive success of the MMAS-4 and MMAS-8 in an ever-expanding array of medication regimens for a wide range of various chronic and terminal illnesses.

23. In addition, Dr. Morisky has worked with international researchers, the International Linguistic Institutes, MAPI, and Corporate Translations, Inc., to translate the Morisky Scales and Morisky Protocol into over 80 different languages.

24. The Morisky Scales are considered the “Gold Standard” world-wide in peer-reviewed journals for the assessment and remediation of patient medication adherence.

C. Dr. Morisky’s Copyrighted Works

25. By operation of federal copyright law, Dr. Morisky is the copyright owner of all writings, articles, books, chapters, monograms, seminar materials, speeches and presentations, and audio and visual works of the same.

26. Included within this body of copyright protected works owned by Dr. Morisky are the MGL MAQ (as a co-owner with other authors), the Morisky Scales (MMAS-4 and MMAS-8), and the Morisky Protocols.

27. While federal copyright registration is not required under federal copyright law to secure ownership of copyrights, registration does provide the holder with presumptive proof of such ownership.

28. On June 12, 2016, the United States Copyright Office issued a Copyright Registration to Donald E. Morisky, Registration No. TX0008285390, for the “Morisky Medication Adherence Scale (4-item)” (the “MMAS-4 Copyright”). A true and accurate copy of that registration is attached hereto as **Exhibit 1**.

29. On September 21, 2018, the United States Copyright Office issued a Copyright Registration to Donald E. Morisky, Registration No. TX0008632533, for the “Morisky

1 Medication Adherence Scale (8-item)” (the “MMAS-8 Copyright”). A true and correct copy
 2 of this registration is attached hereto as **Exhibit 2**.

3 30. Collectively the MMAS-4 Copyright and the MMAS-8 Copyright are the
 4 “Morisky Copyrights.”

5 31. Under federal copyright law, ownership of a copyright can only be transferred
 6 by an assignment in writing.

7 32. Dr. Morisky has not assigned or transferred ownership of his MMAS-4
 8 Copyright or his MMAS-8 Copyright.

9 33. The Morisky Copyrights remains the exclusive property of Dr. Morisky.

10 **D. Dr. Morisky’s Trademarks**

11 34. By operation of federal trademark law, Dr. Morisky’s name, MORISKY,
 12 MORISKY MEDICATION ADHERENCE SCALE, MORISKY SCALE, MORISKY
 13 MEDICATION ADHERENCE PROTOCOL, MMAS, MMAS-4, MMAS-8, and
 14 MORISKY WIDGET (collectively, the “Morisky Marks”) have acquired trademark rights in
 15 connection with the provision of diagnostic procedures to assess adherence to medication
 16 protocols, and in connection with identifying and proscribing compliance and intervention
 17 protocols and other related goods and services offered in connection with the same.

18 35. These terms do not merely identify Dr. Morisky, but also function as secondary
 19 source identifiers in that they also identify the source of such diagnostic and intervention
 20 protocol and related goods and services. As such, the Morisky Marks are protectable marks
 21 under federal trademark law.

22 36. Under federal trademark law, Dr. Morisky, as the first person to use in
 23 commerce the MORISKY, MORISKY MEDICATION ADHERENCE SCALE, MORISKY
 24 SCALE, MORISKY MEDICATION ADHERENCE PROTOCOL, MMAS, MMAS-4, and
 25 MMAS-8 marks, is the sole and exclusive owner of such marks, including without limitation
 26 any domain names comprised of or confusingly similar to such marks or that employ the
 27 mark “MORISKY” as part of such domain name in connection with the offering of similar
 28 goods and services.

37. Dr. Morisky is also the owner of the MORISKY WIDGET mark even though on information and belief his company at the time, Defendant MMAS Research, LLC was the first to use the mark in commerce. As holder of the MORISKY mark, use of the MORISKY mark in connection with any other term, including WIDGET, for the same or similar goods or services would be barred under federal trademark law as confusingly similar and infringing unless owned by the holder of the MORISKY mark.

38. Dr. Morisky permitted Defendant MMAS Research, LLC to use the MORISKY WIDGET mark only because Defendant MMAS Research, LLC had contractually agreed in the License Agreement between the parties, that any intellectual property developed by MMAS Research, LLC under license from Dr. Morisky would be owned exclusively by Dr. Morisky with the MMAS Research, LLC receiving back a revocable license to use such intellectual property.

39. Dr. Morisky has not otherwise assigned, transferred or authorized the assignment or transfer of any ownership interest in any of the Morisky Marks to anyone, including without limitation, Defendants.

40. Under federal trademark law, the Morisky Marks remain the exclusive property of Dr. Morisky.

E. Dr. Morisky's License Agreement with MMAS Research, LLC

41. In 2011, Dr. Morisky founded MMAS Research, LLC, a California limited liability company ("MMAS Research CA").

42. Dr. Morisky founded MMAS Research CA as a vehicle through which he could license the Morisky Intellectual Property, provide requisite training to ensure proper application of his Morisky Scales, and confirm the accuracy of scoring and the propriety of diagnostic results and intervention protocols.

43. From approximately 2011 to 2014, Dr. Morisky licensed over 3000 clinics, practitioners, and organizations to use the Morisky Intellectual Property.

44. On information and belief, Defendant Steven Trubow learned of Dr. Morisky's work from a University of Chicago professor with whom Mr. Trubow was then working.

1 45. On information and belief, Mr. Trubow was then working on a mental health
2 information system (MHIS) that would employ software automation to assist the diagnosis
3 and treatment of mental health patients.

4 46. Reportedly, that University of Chicago professor informed Mr. Trubow that
5 Dr. Morisky had obtained fantastic outcomes with his Morisky Scales for which Mr.
6 Trubow's MHIS may be utilized.

7 47. In the Spring of 2014, Mr. Trubow reached out to Dr. Morisky and offered to
8 collaborate on the application of his MHIS to the existing licensing Dr. Morisky was engaged
9 in under MMAS Research CA.

10 48. The parties ultimately entered into a license agreement ("License Agreement")
11 on or around April 10, 2014. (**Exhibit 3.**)

12 49. In consideration of Dr. Morisky's agreement to grant a non-exclusive, non-
13 transferable, perpetual license in the MMAS-8 and related Morisky Intellectual Property, Mr.
14 Trubow's company (the successor-in-interest of which was MMAS Research, LLC)
15 covenanted and agreed, among other things, that for so long as the company remains a
16 licensee of the MMAS-8 or any other intellectual property owned by Dr. Morisky:

- 17 a. The company would remit to Dr. Morisky fifty percent (50%) of the
18 net revenues of the company (**Exhibit 4**); and
- 19 b. that Dr. Morisky "at all times [would] remain the owner of the
20 MMAS-8 and any associated intellectual property, patents, copyrights
21 or derivatives derived from the use of the use of the MMAS-8 in
22 MHIS" (**Exhibit 3**).

23 50. The parties further agreed that this License Agreement could be terminated for
24 breach of either of the above terms.

25 51. When the parties agreed to these terms, Mr. Trubow had a Washington
26 company known as Olympic Labs LLC that was originally the licensed company.

27 52. Thereafter, in or around December of 2016, Mr. Trubow organized MMAS
28 Research LLC, as a Washington company.

1 53. Although MMAS Research, LLC was not a formal successor of Olympic Labs
2 and no formal license transfer was ever made transferring the License Agreement to MMAS
3 Research, LLC the parties thereafter treated MMAS Research, LLC as the successor licensee
4 to the License Agreement.

5 54. Without authority or approval of Dr. Morisky, Trubow, later formed
6 Defendants MMAS Research Italy S.R.L. and MMAS Research France, SAS, as entities
7 under his exclusive ownership and control and for which he can accept service of process.
8 On information and belief, Trubow unilaterally directed MMAS Research, LLC, without
9 approval or authorization from Dr. Morisky, to sublicense the rights MMAS Research, LLC
10 had under the License Agreement to Defendants MMAS Research Italy S.R.L. and MMAS
11 Research France, SAS, and these affiliated Defendant entities have thereafter functioned as
12 an extension of or integrated part of MMAS Research, LLC in all material respects.

13 55. In or around January of 2019, Olympic Labs ceased to exist as an entity.

14 **F. Revocation of License Agreement**

15 56. Dr. Morisky fully complied with the terms of the License Agreement
16 applicable to him.

17 57. Defendant MMAS Research (inclusive of its affiliated Defendant entities) at
18 the direction of its manager Mr. Trubow has not.

19 58. Although, Mr. Trubow has consistently reaffirmed that Dr. Morisky is entitled
20 to fifty percent (50%) of the net revenue of the MMAS Research (inclusive of its affiliated
21 Defendant entities), MMAS Research has failed to comply with this provision. (**Exhibit 4.**)

22 59. MMAS Research (inclusive of its affiliated Defendant entities) has failed to
23 provide an accounting of its books and records to Dr. Morisky.

24 60. MMAS Research also breached the License Agreement by falsely claiming
25 ownership of Later Created Property in license agreements with customers, applications with
26 the United States Patent and Trademark Office, settlement agreements, and/or
27 communications with others in the market or on public records or filings.
28

1 61. Dr. Morisky tried in vain for months to get the MMAS Research and Mr.
 2 Trubow to correct their breaches, to provide accounting, to obtain Dr. Morisky's concurrence
 3 in company policy and procedures. In all material respects, Mr. Trubow ignored Dr.
 4 Morisky's requests or rejected them outright and often became violently angry and verbally
 5 abusive.

6 62. On March 10, 2020, Dr. Morisky formally provided notice of MMAS
 7 Research's breach of the License Agreement ("Notice of Breach"). (**Exhibit 5.**) In
 8 accordance with the License Agreement this Notice of Breach informed MMAS Research
 9 that "the License Agreement will terminate on Friday, April 10, 2020" if MMAS Research
 10 failed to cure such breaches by, among other things, doing the following:

- 11 a. Providing a full financial accounting of MMAS Research from 2017
- 12 to the present;
- 13 b. Paying Dr. Morisky of all sums due and not paid under the License
- 14 Agreement; and
- 15 c. Removing any claims of ownership to the MMAS-8 or any associated
- 16 Morisky Intellectual Property.

17 63. MMAS Research (inclusive of its affiliated Defendant entities) failed to
 18 perform any of the required acts to cure its breach of the License Agreement by April 10,
 19 2020.

20 64. To date, MMAS Research has neither provided an accounting nor made
 21 payment to Dr. Morisky of all sums due and not paid under the License Agreement, and
 22 MMAS Research has not removed any claims of ownership to the MMAS-8 or any associated
 23 Morisky Intellectual Property.

24 65. As such, on April 10, 2020, the license to MMAS Research of the MMAS-8
 25 and related Morisky Intellectual Property was revoked. As of April 10, 2020, MMAS
 26 Research (inclusive of its affiliated Defendant entities) had no right to use or copy the
 27 Morisky Copyrights, no right to use the Morisky Trademarks, and no right to use or disclose
 28 the Morisky Protocols.

1 73. In doing so, each Defendant has directly, indirectly, contributorily and/or
2 vicariously violated Plaintiff's exclusive rights of at least reproduction, preparation of derivative
3 works, and distribution of the Morisky Copyrights.

4 74. Each of the actions of the Defendants described herein constitute infringement of
5 Plaintiff's exclusive rights protected under 17 U.S.C. § 101 et seq.

6 75. The Morisky Copyrights contains copyright notices advising the user that the
7 Morisky Copyrights are protected by federal copyright laws. Each of the Defendants' actions
8 with respect to copyright infringement and other acts described herein were made with full
9 knowledge of Plaintiffs ownership of the copyrights in the Morisky Scales.

10 76. The conduct of each Defendant is causing and, unless enjoined and restrained by
11 this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be
12 compensated or measured in money.

13 77. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503,
14 Plaintiff is entitled to injunctive relief prohibiting each Defendant from further infringing the
15 Morisky Copyrights and ordering that each Defendant destroy all copies in any format, including
16 digital translations and derivatives based on or utilizing any of the Morisky Copyrights in
17 violation of the Copyright Act.

18 78. By reason of the foregoing acts, if such remedy is elected at trial, Plaintiff is
19 entitled to statutory damages from each Defendant pursuant to 17 USC §504, et seq.
20 Alternatively, at Plaintiff's election, Plaintiff is entitled to its actual damages incurred as a result
21 of each Defendants' acts of infringement plus any profits of Defendants attributable to the
22 infringements in an amount of at least \$10,000.00.

23 79. The foregoing acts of infringement have been willful or willfully blind, intentional,
24 and in disregard of, and with indifference to, the copyrights of Plaintiff.

25 80. As a result of each Defendant's infringement of Plaintiff's exclusive rights under
26 copyright, Plaintiff is entitled to his attorneys' fees and costs pursuant to 17 U.S.C. § 505.

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SECOND CLAIM FOR RELIEF

(Trademark Infringement – 15 U.S.C. § 1125)

81. Plaintiff repeats and realleges the allegations in the previous Paragraphs as if fully set forth and incorporates them herein by reference.

82. As a direct result of Plaintiff's longstanding use, sales, advertising, and marketing, the Morisky Trademarks have acquired a secondary and distinctive meaning among the relevant public who have come to identify the Morisky Trademarks with Plaintiff's products, including without limitation the Morisky Scales and related goods and services.

83. Defendants' goods and services exactly duplicate and appropriate the Morisky Trademarks and are likely to confuse the public into falsely believing that Plaintiff approves, authorizes, or sponsors the goods and services offered by Defendants when Plaintiff does not.

84. By misappropriating and using the likeness of the Morisky Trademarks in connection with the sale and offering for sale of Defendants' goods and services, Defendants are misrepresenting and will continue to misrepresent and falsely describe to the general public the origin, approval and sponsorship of Defendants' goods and services.

85. Defendants have caused such goods and services to enter into interstate commerce willfully and with full knowledge of the falsity of the designation of their origin and description and representation in an effort to mislead the purchasing public into believing that Defendants' goods and services are authorized by Plaintiff when they are not.

86. These acts constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

87. Defendants have obtained gains, profits, and advantages as a result of their unlawful acts.

88. As a direct and proximate result of Defendants' acts, Plaintiff has suffered, and will continue to suffer, monetary damages and irreparable injury to his business, reputation, and goodwill. Plaintiff is entitled to injunctive relief and the recovery all damages incurred thereby and including his attorney's fees and costs.

1 89. Defendants have obtained gains, profits, and advantages as a result of their
2 unlawful acts.

3 **THIRD CLAIM FOR RELIEF**

4 (Common Law Trademark Infringement)

5 90. Plaintiff repeats and realleges the allegations in the previous Paragraphs as if fully
6 set forth and incorporates them herein by reference.

7 91. By virtue of having used and continuing to use the Morisky Trademarks, Plaintiff
8 have acquired common law rights in each of those Marks.

9 92. After the termination of the license between the Parties on April 10, 2020,
10 Defendants' use of a mark identical and/or confusingly similar to any of the Morisky Trademarks
11 infringes Plaintiffs' common law rights in his mark. This use is likely to cause confusion,
12 mistake, or deception among consumers, who will believe that Defendants' services, products,
13 and/or Internet domain name originates from, or is affiliated with, or endorsed by Plaintiff when,
14 in fact, it is not.

15 93. As a direct and proximate result of Defendants' infringement of Plaintiff's
16 common law trademark rights, Plaintiff has suffered, and will continue to suffer, monetary
17 damages and irreparable injury to his business, reputation, and goodwill. Plaintiff is entitled to
18 recover all damages incurred thereby and to recover his attorney's fees and costs.

19 **FOURTH CLAIM FOR RELIEF**

20 (Deceptive Trade Practices under N.R.S. § 598.0915)

21 2. Plaintiff repeats and realleges the allegations in the previous Paragraphs as if fully
22 set forth and incorporates them herein by reference.

23 3. In the course of conducting its business, Defendants knowingly made false
24 representations as to affiliation, connection and/or association with Plaintiffs by using a mark or
25 marks that are confusingly similar to Plaintiff's Morisky Trademarks and otherwise engaged in
26 deceptive trade practices.

4. As the direct and proximate result of Defendants' conduct, Plaintiffs have suffered, and will continue to suffer, monetary damages and irreparable injury to their business, reputation, and goodwill.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. That Defendants, their agents, servants, employees, representatives, successors and assigns, and all persons, firms, corporations or other entities in active concert or participation with any of said Defendants, be immediately and permanently enjoined from:

1. Directly, indirectly, contributorily or vicariously infringing the Morisky Copyrights or any derivatives of the same, including, but not limited to, copying, use, or the licensure of any of the Morisky Scales or any derivatives of the Morisky Scales that are identical or substantially similar to the Morisky Scales, including without limitation, the "Morisky Widget" derivative of the MMAS-8 Copyright;

2. Advertising, selling and/or offering for sale and good or service involving the provision of any of the Morisky Scales, the Morisky Widget, the scoring of the same, training regarding the same, or any services regarding the Morisky Protocol;

3. Directly or indirectly infringing the Morisky Trademarks in any manner, including, but not limited to, distribution, advertising, selling and/or offering for sale any good or service which infringes the Morisky Trademarks, including any mark that is confusingly similar to any of the Morisky Trademarks;

4. Engaging in any conduct that tends falsely to represent that, or is likely to confuse, mislead or deceive the purchasers, Defendants' customers and/or members of the public to believe the actions of Defendants, the goods or services offered or sold by Defendants, or Defendants themselves are connected with Plaintiff, are sponsored, approved or licensed by Plaintiff or are in some way affiliated with or are the successor in interest to Plaintiff;

5. Affixing, applying, annexing or using in connection with the distribution, advertising, sale and/or offer for sale or any other use of any good or service under a false

1 description or representation, including words or marks tending to falsely claim Plaintiff
2 authorized or approved the use, license or sublicense of, or transferred to Defendants or either of
3 them any interest in, the Morisky Copyrights and/or the Morisky Trademarks.

4 6. Otherwise competing unfairly with Plaintiff in any manner;

5 B. That Defendants be required to pay actual damages increased to the maximum extent
6 permitted by law and/or other applicable damage at Plaintiff's election;

7 C. That Defendants account for and pay over to Plaintiff all damages sustained by Plaintiff
8 and profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that
9 those profits be increased as provided by law; and

10 D. That Plaintiff be awarded any and all other and further relief as the Court may deem just
11 and proper under the circumstances.

12 DATED May 28, 2020.

13 Respectfully Submitted,

14 **WEIDE & MILLER, LTD.**

15
16 /s/ F. Christopher Austin

17 F. Christopher Austin
18 10655 Park Run Drive, Suite 100
19 Las Vegas, NV 89144

20 Attorney for Plaintiffs
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